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10/762,387	01/21/2004	Christopher Pearce	PB10056.00	4868

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EXAMINER

ALTER, ALYSSA M

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/762,387
Filing Date: January 21, 2004
Appellant(s): PEARCE ET AL.

MAILED

JAN 30 2008

Group 370

Mary Yawney Redman
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 18, 2007 appealing from the Office action mailed May 1, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102/103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

1. Claims 1-78 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as being unpatentable over Crosby et al., U.S. Patent Publication 2005/0004485. Crosby et al. teach a system for detecting and

diagnosing cardiac risk, including ischemia, by detecting the patient's ECG and combining with data from in vitro testing such as cardiac marker tests. The reference mentions past AHA documentation that indicates that it is known protocol to first use ECG data for determining clinical symptoms as a first diagnostic, and then if the ECG is normal or not helpful, resorting to, i.e. prompting a physician to, performing cardiac marker tests as a second diagnostic tool (paragraph 58). Furthermore, Crosby et al. teaches several embodiments, which automatically perform both diagnostic tests, but appears to include an embodiment at paragraph 62, that, after ECG analysis alone, resorts to in vitro testing if a condition exists. This latter embodiment would amount to a prompting to perform and enter diagnostic data (i.e. a test strip per paragraph 72). As such it would seem that a physical prompt would be an inherent part of the Crosby et al. system.

In the alternative, although the examiner considers Crosby et al. to disclose a prompt, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have altered the automatic steps of Crosby et al. and made them manual and executed in a prompted order, since providing a prompt, either audible or visual, would yield the predictable results of guiding the operator through the diagnosis process, in order to ensure proper medical care is provided to the patient.

As to Claim 3, the strip reader would amount to a user interface (paragraph 72).

As to Claim 6 and the like, although a treatment is not displayed, determining treatment is an inherent step of physician protocol. Making such a step automatic is

well known in the art and incorporation into the Crosby device would have accordingly been a matter of design choice.

As to Claim 7, displays are discussed at paragraph 75.

As to Claim 19, chest pain is a physiological state, paragraph. 64.

As to Claim 20 and the like, blood pressure would be an intrinsic part of the patient record and hence making it a part of the historical data used by the system would have been obvious to skilled physicians.

It would appear that the addition of time/date data would be inherent to Crosby's system and method. Further, the generation of a request for results after the strip test, e.g. Claim 56, would have been inherent to the system operation.

(10) Response to Argument

Appellant's arguments filed January 18, 2007 have been fully considered but they are not persuasive.

The Appellant argues that Crosby et al. does not "generate a prompt to a user to perform a cardiac marker test". However as previously stated, Crosby et al. teaches several embodiments, which automatically perform both diagnostic tests, but appears to include an embodiment at paragraph 62, that, after ECG analysis alone, resorts to in vitro testing if a condition exists. This latter embodiment would amount to a prompting to perform and enter diagnostic data (i.e. a test strip per paragraph 72). As such it would seem that a physical prompt would be an inherent part of the Crosby et al. system.

Furthermore, the Appellant states that the system disclosed by Crosby et al. is "intended for use by a physician". On the contrary, the Appellant assertion is without basis, since Crosby et al. discloses "there would be an advantage to providing diagnosis of ACS (Acute Coronary Syndrome) before a patient presents to an emergency room, for example in an ambulance or in the physician's office" (page 4, paragraph 33). Therefore the Crosby et al. system is not only intended for use by a physician.

The Appellant also argues that it would not have been obvious to incorporate a prompt into the Crosby et al. system. However, it would have been obvious to incorporate a prompt, since prompting the operator would yield the predictable results of performing diagnostic tests.

Furthermore, it would have been an obvious design choice to have altered the automatic steps of Crosby et al., which happens to be in the same order as claimed by the Appellant, and made them manual and in a prompted order in order to yield the predictable results of guiding the operator through the diagnosis process, in order to ensure proper medical care is provided to the patient.

(11) Related Proceeding(s) Appendix


No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

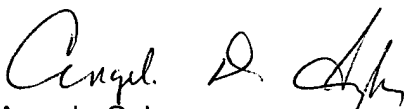
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Art Unit: 3762


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